

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
U.S. ARMY,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHB No. 79-33

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter being an appeal of a \$50 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I; having come before the Pollution Control Hearings Board by submission in writing as agreed to by the parties' representatives, and the appellant U. S. Army represented by George C. Ryker, Colonel, JAGC; and respondent Southwest Air Pollution Control Authority being represented by its attorney, James D. Ladley; the Board having considered the written arguments and affidavits of the parties, records and files herein, and having reviewed the Proposed Findings of Fact, Conclusions of Law and Order of the Presiding Officer, and the Presiding Officer having served said proposed Findings of Fact, Conclusions of

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1 Law and Order upon all parties herein by certified mail, return
2 receipt requested and twenty days having elapsed from said service; and

3 The Board having received no exceptions to said proposed Findings,
4 Conclusions and Order; and the Board being fully advised in the premises;
5 now therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
7 Findings of Fact, Conclusions of Law and Order, dated the 12th day of
8 September, 1979, and incorporated by reference herein and attached
9 hereto as Exhibit A, are adopted and hereby entered as the Board's
10 Final Findings of Fact, Conclusions of Law and Order herein.

11 DONE at Lacey, Washington, this 19th day of October,
12 1979.

13 POLLUTION CONTROL HEARINGS BOARD

14 Nat W. Washington
15 NAT W. WASHINGTON, Chairman

16 David Akana
17 DAVID AKANA, Member

18 Chris Smith
19 CHRIS SMITH, Member

20 FINAL FINDINGS OF FACT,
21 CONCLUSIONS OF LAW
22 AND ORDER
23
24
25
26
27

CERTIFICATION OF MAILING

I, Carol Olson, certify that I mailed, postage prepaid, copies of the foregoing document on the 1 day of June, 1979, to each of the following parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

George C. Ryker
Colonel, JAGC
Staff Judge Advocate
Office of the Staff Judge Advocate
Fort Lewis, Washington 98433

Mr. James D. Ladley
Attorney at Law
P.O. Box 938
Vancouver, WA 98666

Southwest Air Pollution Control Authority
7601-H N.E. Hazel Dell Avenue
Vancouver, Washington 98665

U. S. Army
Vancouver Barracks
Vancouver, Washington 98666

Carol W. Olson, Secretary

FINAL FINDINGS OF FACT,
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POLLUTION CONTROL HEARINGS BOARD
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IN THE MATTER OF
U.S. ARMY,

Appellant,

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SOUTHWEST AIR POLLUTION
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PCHB No. 79-33

PROPOSED FINDINGS OF FACT,
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AND ORDER

This matter, the appeal of a \$50 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I, came before the Pollution Control Hearings Board by submission in writing as agreed to by the parties representatives. Appellant was represented by George C. Ryker, Colonel, JAGC; respondent was represented by its attorney, James D. Ladley.

Having considered the written arguments and affidavits of the parties, the Pollution Control Hearings Board makes these

1 FINDINGS OF FACT

2 I

3 Respondent, pursuant to RCW 43.21B.260 has filed with this Board
4 a certified copy of its Regulation I containing respondent's
5 regulations and amendments thereto of which official notice is
6 taken.

7 II

8 During January of 1979, a large accumulation of broken tree
9 limbs resulted from weather conditions in Clark and Cowlitz Counties.
10 In an attempt to assist disposal of the debris, respondent allowed
11 burning by private homeowners of broken tree limbs and other natural
12 vegetation resulting from ice damage. On January 19, 1979,
13 respondent issued a press release which clearly stated that the
14 ban on open burning of natural vegetation by private homeowners
15 was being lifted. The January 21, 1979 edition of the Vancouver
16 Columbian stated:

17 "The Southwest Air Pollution Control
18 Authority is lifting the ban on
19 open burning so broken tree limbs
and other natural debris can be
disposed of."

20 The article did not mention that the lifting of the ban applied to
21 only private homeowners, although the newspaper article indicated
22 the lifting of the ban was in order to help "folks" who needed to get
23 rid of debris.

24 III

25 The sub installation commander at appellant's Vancouver
26 barracks relied upon the newspaper article as well as radio broadcasts

for information concerning the relaxation of the ban. The commander appointed a subordinate to verify that such fires would meet any safety requirements imposed by the Washington State Patrol and local fire authorities in addition to the requirements lifted by the respondent. Both the State Patrol and the Vancouver Fire Department stated that such fires are not prohibited and that no permit was required. We take official notice that respondent has assessed a civil penalty against the Washington State Patrol who relied upon the same newspaper article as is here involved. See PCHB No. 79-22.

Apparently believing the special lifting of the ban applied to everyone who wished to burn vegetation debris, an agent of the appellant ignited a fire on January 29, 1979. The fire consisted of the natural vegetation with a diminutive amount of wood scraps and sheet metal with wood attached, and was located at the Vancouver Barracks.

IV

Appellant did not apply, nor obtain any permit from the respondent, Southwest Air Pollution Control Authority. Appellant has not previously been cited for violation of the open burning regulations of the respondent. This incident was the result of the publicity regarding respondent's lifting of the ban on open burning. Natural and other debris are normally disposed of at Vancouver Barracks by hauling the debris to a sanitary landfill.

V

At 10:30 a.m. on January 29, 1979, respondent's inspector observed appellant's fire, being conducted by persons other than

a private homeowner. A field notice of violation was issued to appellant's agent at that time. The fire was extinguished by appellant's agent and the remaining materials were hauled away to a sanitary landfill. On January 31, 1979, a Notice of Violation of Article IV, Section 4.01 of respondent's Regulation I was issued and a civil penalty of \$50 was assessed.

VI

Any Conclusion of Law hereinafter stated which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Section 4.01 of respondent's Regulation I requires that no person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow or maintain any open fire within respondent's jurisdiction, except in circumstances not applicable here, without doing so under respondent's permit. Appellant caused a fire to be ignited without obtaining a permit from respondent. Consequently appellant violated Section 4.01 of respondent's Regulation I.

II

Although appellant did violate the above section of respondent's Regulation I, there are mitigating circumstances. Appellant reasonably relied upon the information contained in a newspaper article and radio broadcast concerning the limited lifting of the ban on open burning. Apparently appellant has never before violated any of

respondent's open burning regulations. Furthermore, the fire was immediately extinguished by appellant as soon as respondent's representatives notified appellant of the violation. Consequently the \$50 penalty should be suspended on condition that appellant not violate respondent's open burning regulations for a period of one year from the date of appellant's receipt of this Order.

This incident followed the respondent's attempt to grant courteous, timely aid to the community, and appellant has done nothing here to impair its reputation as a good neighbor in that community.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The \$50 civil penalty is affirmed, provided however, that the same is suspended on condition that appellant not violate respondent's open burning regulations for a period of one year from the date of appellant's receipt of this Order.

DATED this 12th day of September, 1979.

POLLUTION CONTROL HEARINGS BOARD

William A. Harrison

WILLIAM A. HARRISON
Presiding Officer

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER